

**MEMORANDUM OF UNDERSTANDING
BETWEEN SANTA FE COUNTY
AND THE SANTA FE PUBLIC SCHOOLS**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the "Agreement") is entered into on this 29 day of January, 2014, by and between Santa Fe County (hereinafter referred to as the "County"), a New Mexico political subdivision, and the Santa Fe Public Schools (hereinafter referred to as the "Schools"), a New Mexico local public body, operating at 4250 Airport Road, Santa Fe, New Mexico 87505.

RECITALS

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of Santa Fe County, this Agreement confirms the parties' commitment and mutual cooperation which recognizes that the partnering activities between government entities may produce community and constituency benefits beyond what might be produced independently;

WHEREAS, this Agreement is exempt from the provisions of the Procurement Code in accordance with Section 13-1-98(A) NMSA 1978;

WHEREAS, the prevention and intervention programs for children and youth who are neglected, delinquent, or who risk dropping out of school are addressed by the County and Schools in the Santa Fe County Youth Development Program (Y.D.P.), which includes the Santa Fe County Day Reporting Program using the annual allocation of funds from Title I, Part D Program (PL 105-220, Workforce Investment Act of 1998). No funds are paid by either party to the other party under this Agreement;

WHEREAS, the County desires to assist the Schools in providing quality education programs and activities that assist children who are neglected, delinquent, at-risk of dropping out of school risk, are at risk of academic failure, have drug or alcohol problems, or who are pregnant or are parents;

WHEREAS, in addition, said services provided by the Schools and the County facilitate and support the transition of at-risk children and youth from detention to day reporting programs to making the choice to continue and further their education.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. SCOPE OF UNDERSTANDING

A. The Schools shall perform the following services during the 2014-15 School Year:

- a) Within the School's educational programs, provide formal instruction and curriculum consistent with the New Mexico Common Core State Standards,

as well as instruction potentially using the EDGENUITY system with modification constructed around safety.

- b) Respond to requests to provide transcripts and assist with local school communication and continuation of credits.
- c) Provide computers to build technology skills including IT support, to include County support when applicable and possible.
- d) Work in concert with Juvenile Probation officials and County detention officials in ensuring confidentiality is maintained regarding the case information for youth participants in Y.D.P.
- e) Maintain all educational records for students who participate in Title I services, Part D.
- f) Employ qualified teachers and ensure that the procedures for securing highly qualified teachers are handled by the Schools. By the utilization of Title I, Part D services and related funding, the Schools may hire additional teachers, aides, tutors, and other staff members to provide additional instruction in the areas of greatest need. Background checks will be conducted by the School District and other Santa Fe Public School District Human Resources Department documents will be completed. Upon assignment to Y.D.P., the County will conduct a background check as well. The County also requires qualified Santa Fe Public Schools teachers and other staff members to complete an Employee Orientation presented by the County which covers the following topics applicable to teacher and staff interactions at Y.D.P.:
 - communication expectations
 - Sexual Harassment Policy
 - dress code expectations
 - prohibited food and drinks
 - prohibited electronic devices
 - other prohibited items
 - procedure for entering and exiting the facility
 - roles and responsibilities of security staff
 - differences in expectations for Day Reporting and the Detention Center
 - overall Santa Fe County expectations
- g) Provide professional development for staff members who are involved in Title I, Part D Services.
- h) Procure needed educational materials and equipment for Title I Services instruction, including books, computers, audio-visual equipment, supplies and classroom materials.
- i) Provide ancillary services for students with individualized education plans (I.E.P.).
- j) At all times during this Agreement, the Schools shall have sole employment responsibilities for the teachers, aides, tutors and other instructional staff members, including any residual employment obligations if the School employees are prohibited from performing their employment duties in Y.D.P. facilities.

B. The County shall perform the following services:

- a) Provide classroom space at Y.D.P., utilities, shelter, food, religious services, recreation, counseling, medical and mental health treatment and security for participants in the educational programs of Y.D.P.
- b) Allow and support visitation for teen parents and assistance in transitioning from detention to school or other steps to further their education. The County will provide IT support for the Y.D.P. to the extent allowed by County policies and procedures.
- c) Share relevant information in a timely manner with the Schools in regard to existing individualized education program needs.
- d) Within the County facilities, detention officials will manage all Y.D.P. participants/detainees in a safe and secure manner in accordance with County policy and procedure. After written consultation with the Superintendent of Schools, the City Manager upon recommendation by the Y.D.P. Director may temporarily or indefinitely prohibit individual School employees from entering the Y.D.P. facility.
- e) Where feasible, ensure that education programs in the Y.D.P. are coordinated with the student's home school, particularly with respect to a student with an individualized education program under part B of the Individuals with Disabilities Education Act. If a student needs special education services while in the Y.D.P., the County will notify the local school of the student's needs.
- f) Provide support programs that encourage students who have dropped out of school to reenter school once their term at the Y.D.P. has been completed, or provide such students with the skills necessary to gain employment or seek a secondary school diploma or its recognized equivalent.
- g) Ensure that educational programs in the Y.D.P. are related to assisting students to meet high academic achievement standards.
- h) To the extent possible, use technology to assist in coordinating educational programs between the Y.D.P. and the Schools.
- i) Where feasible, involve parents in efforts to improve the educational achievement of their children and prevent the further involvement of such children in delinquent activities.
- j) Coordinate funds received under this Agreement with other local, State, and Federal funds available to provide services to participating students, such as funds made available under Title I of Public Law 105-220, and vocational and technical education funds.
- k) Coordinate programs operated under this subpart with activities funded under the Juvenile Justice and Delinquency Prevention Act of 1974 and other comparable programs, if applicable.
- l) If appropriate, work with local businesses to develop training, curriculum-based youth entrepreneurship education, and mentoring programs for students.

C. The Services provided by the Schools and the County under this Agreement shall be at their own separate expense, neither party is due compensation from the other under the terms of this Agreement.

2. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate June 1, 2017, unless terminated earlier pursuant to Section 3, Termination or Section 13, Appropriations.

3. TERMINATION

Each party shall have the right to terminate this Agreement upon written notice, in the event of the other party's (the "Breaching Party") material breach hereof which is not cured within sixty (60) days after notice specifying such breach. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. No party shall be relieved of liability to the other party for damages sustained because of any breach of the Agreement.

4. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other party.

5. NO THIRD-PARTY BENEFICIARIES

The Schools and the County are the only parties to this Agreement. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third parties not a party to this Agreement. This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement. The parties shall cooperate fully in opposing any attempt by any third person or entity to claim any right, benefit, protection, release, or other consideration under this Agreement.

6. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its own actions in accordance with this Agreement. Neither party shall be responsible for liability incurred as a result of the other party's negligence, acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, *et seq.*, NMSA 1978, as amended.

7. NO WAIVER OF IMMUNITIES, DEFENSES OR PROTECTIONS

Nothing in this Agreement waives or alters any immunities, defenses or protections provided to the Schools or the County, and their respective employees, agents, board

members, commissioners or officers, under the New Mexico Tort Claims Act, or other New Mexico or federal law.

8. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability applicable to the Schools and/or County and their respective employees, agents, board members, commissioners or at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*

9. DISPUTE RESOLUTION

Disputes on any matter relating to this Agreement shall be discussed and resolved by authorized representatives of each party who have the authority to bind the party that they represent. The parties shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the parties may pursue any other legal means such as mediation for resolving disputes which may arise from or under this Agreement.

10. AMENDMENT

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

11. INTEGRATION CLAUSE

This Agreement incorporates all the covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

12. APPLICABLE LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The Schools and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

13. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature in this or future fiscal years, this Agreement shall terminate upon written notice being given by the Schools to the County and the Schools shall have no duty to

reimburse the County for expenditures made in the performance of this Agreement incurred after written notice to the County is provided by the Schools pursuant to this paragraph. The Schools are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the Schools. The Schools' decision as to whether sufficient appropriations are available shall be accepted by the County and shall be final and not subject to challenge by the County.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Schools. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Schools for expenditures made in the performance of this Agreement incurred after written notice to the Schools is provided by the County pursuant to this paragraph. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Schools.

14. REQUIRED APPROVALS

This Agreement will not be final or binding upon the Schools until or unless approved by the Santa Fe Public Schools.

15. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

16. EQUAL OPPORTUNITY COMPLIANCE

Each party agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, each party assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed under this Agreement. If a party is found not to be in compliance with these requirements during the life of this Agreement, that party agrees to take appropriate steps to correct these deficiencies.

17. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held void, invalid or unenforceable, such provision shall be severed from the remainder of the Agreement and the remainder of this Agreement shall not be affected and shall be valid and enforceable.

18. NOTICES

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For Santa Fe Public Schools:

Santa Fe Public Schools
Department of Teaching and Learning
ATTN: Donna Grein
Federal Programs Coordinator
B.F. Young Building
1300 Camino Sierra Vista
Santa Fe, New Mexico 87505

For County:

Santa Fe County Manager's office
Attn: Katherine Miller
102 Grant Ave.
Santa Fe, NM 87504

and,

Renee Fernandez,
Interim Administrator
Santa Fe County Youth Development
Program
4250 Airport Road
Santa Fe, New Mexico 87505

19. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

The Schools and the County shall assure compliance with all applicable state and federal statutes and regulations in the performance of this Agreement.

20. FORCE MAJEURE

Neither the County nor the Schools shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

SANTA FE COUNTY:


Katherine Miller, County Manager

Date 1-29-15

Approved as to form


Greg Shaffer, Santa Fe County Attorney

Date 12-2-14

Finance Department


Teresa C. Martinez, Finance Director

Date 12/3/14

SANTA FE PUBLIC SCHOOL DISTRICT


Dr. Joel Boyd, Superintendent

Date 4/12/2015

Approved as to form


Geno Zamora
Santa Fe Public Schools Attorney

Date 12/16/14